association then comes into existence (*Nandlal Sohanlal, Jullundur* v *The Commissioner of Income Tax, Patiala*[3]).

Under the ordinary law governing partnership, modification in the constitution of the firm in the absence of a special agreement to the contrary amounts to dissolution of the firm and reconstitution thereof, a firm at common law being a group of individuals who have agreed to share the profits of business carried on by all or any of them acting for all, and supersession of the agreement brings about an end of the relation (*Shivram Poddar* v *Income Tax Officer*[4]).

In my opinion, having regard to the surrounding circumstances there is nothing either written, oral or by the conduct of the parties to justify a conclusion that there was an agreement between the partners that the partnership should continue notwithstanding the death of a partner.

Having come to that finding, the issue of estoppel which the defendants submitted acted against the plaintiffs does not arise. There is nothing to show that the plaintiffs had acted in any way which may give rise to an estoppel. As I have said earlier, the administrators were admitted as new partners and not on the basis that there was an agreement to continue the partnership. In the event, the plaintiffs' conduct cannot be considered as evidence of agreement between the parties to continue with the partnership. Their conduct does not give rise to an estoppel. There is nothing to show that when the administrators joined in the partnership they were thinking that the partnership had not been dissolved by an agreement between the partners. The evidence merely shows that they were taken in as a partner and nothing more. The inference I gather from here is that they had joined a new partnership altogether.

In my judgment, for the same reasons given above, similarly the partnership stands dissolved by the death of Ngai Ngan Tong in April 1988 and again by the death of Lee Choo Meng in August 1988.

In the event, I would allow the plaintiffs' application and order a declaration that by reason of the death of Ngai Ngan Tong and Lee Choo Meng on 29 April 1988 and 25 August 1988 respectively, the partnership and business of Tai Kwong Goldsmiths & Jewellers stands dissolved under s 35(1) of the Partnership Act 1961. I would order that the plaintiffs be awarded costs of this application.

Application allowed.

Solicitors: *Majid Krishna Menon & Lee; Sri Ram Zulkifly & Kumar.*

Reported by *Kevin Mathews*

Lon Kon Sing v Kadrman bin Karim & Anor

HIGH COURT (JOHORE BAHRU) — SUIT NO 484 OF 1983
RICHARD TALALLA JC
24 FEBRUARY 1990

Civil Procedure — Taxation — Action commenced in High Court — Damages awarded within subordinate courts' jurisdiction — Whether party and party costs may be taxed on High Court scale

The plaintiff commenced an action in the High Court in 1983 for damages for injuries suffered in a motor accident. The monetary jurisdiction of the sessions court was limited to $25,000 at that time. In 1987 this jurisdiction was increased to $100,000. No action was taken by either the plaintiff or defendants to transfer the case to the sessions court. At the hearing, the defendants were ordered to pay $33,001.20 to the plaintiff, after the apportionment of liability, and also the plaintiff's costs, to be taxed or agreed upon. The plaintiff filed a bill of costs for taxation according to the High Court scale. The defendants objected contending that the bill should be taxed according to the sessions court scale. The registrar allowed the objection on the grounds that the amount of damages recovered on 100% liability fell within the jurisdiction of the sessions court and that no certificate under O 59 r 27(6) of the Rules of the High Court 1980 had been obtained. The plaintiff appealed against the decision of the registrar.

Held, dismissing the appeal except in respect of the order of the registrar in (2) below:

(1) The sum received by the plaintiff did not exceed $100,000. It follows that he is not entitled to any more costs than he would have been entitled to if the proceedings had been brought in a subordinate court. Further, the plaintiff failed to ask for a certificate from the judge that there was sufficient reason for bringing the action in the High Court.

(2) The order of the registrar that the plaintiff was not entitled to have his costs taxed in the High Court was incorrect. The registrar of the High Court may tax the plaintiff's bill in accordance with the scale of costs applicable to the sessions court. Accordingly, the plaintiff's appeal against this order of the registrar was allowed.

(3) The court also directed the registrar to tax the plaintiff's bill of costs appropriately amended or prepared afresh on the scale of costs applicable to the sessions court unless in the meantime the plaintiff makes application for a certificate of a judge pursuant to O 59 r 27(6).

(4) As it was as much the responsibility of the defendants as the plaintiff's to transfer the action to the sessions court in the first place and to place before the registrar the authority by which he was required to tax the bill, albeit on the scale of costs applicable to the sessions court, no order was made as to the costs of this action.

Case referred to

1 *Gulwant Singh* v *Abdul Khalik* [1964] MLJ 286 (folld)

Legislation referred to

Subordinate Courts Act 1948 s 45
Subordinate Courts (Amendment) Act 1987 s 4
Rules of the High Court 1980 O 59 r 27(1), (6)

N Jegatheeson for the plaintiff/appellant.
P Menon for the defendants/respondents.

Cur Adv Vult

Richard Talalla JC: In this action which was commenced on 24 September 1983, the plaintiff claimed damages for injury suffered by him in a motor car accident caused by the negligence of the defendant. At that time, the monetary jurisdiction of the sessions court as set out in s 65 of the Subordinate Courts Act 1948 was limited to $25,000. Pursuant to the provisions of s 4 of the Subordinate Courts (Amendment) Act 1987 the monetary jurisdiction of the said court was increased to $100,000.

The plaintiff's action was in fact commenced by his solicitors. The writ was specially indorsed with a statement of claim which was settled by the solicitors. As competent solicitors, there was no reason to assume that they were other than competent; they would have after careful consideration of the facts and circumstances of the plaintiff's case and the law applicable thereto, calculated and estimated that the damages that were likely to be awarded to the plaintiff would be a sum in excess of the then monetary jurisdiction of the sessions court and accordingly would have decided to commence action in this court. Hence these proceedings.

After the monetary jurisdiction of the magistrate's court was increased as above stated, a practice direction, to wit, Practice Direction No 3 of 1987, was issued making it the responsibility of the parties to apply to the High Court to transfer cases now triable by the sessions court to the sessions court and generally facilitating such transfer. Neither the plaintiff nor the defendants took any steps under the practice direction. Instead, they left the action to proceed in this court. The learned senior assistant registrar in due course gave notice of hearing, the action was tried and on 17 August 1988 it was adjudged that liability between the plaintiff and the defendants be apportioned at 40% and 60% respectively. Damages were assessed under several heads amounting in aggregate to $55,002 of which 60% was ordered to be paid to the plaintiff by the defendants. Thus the plaintiff was entitled to receive under judgment of this court a sum of $33,001.20.

The judgment also provided for the defendants to pay the costs of the action to be taxed or agreed upon. Apparently there was no agreement as to costs. So the plaintiff carried in before the registrar a bill of costs for taxation. The bill was prepared in accordance with the scale of costs laid down in the Schedule to the Rules of the High Court 1980. The defendants objected, contending that the bill of costs should be taxed according to the scale of costs applicable to the sessions court. The learned registrar allowed the objection. He did so on the following grounds:

(i) the amount of damages recovered on 100% liability was $56,502 which was then triable by the sessions court pursuant to the Subordinate Courts (Amendment) Act 1987;

(ii) since the amount of damages awarded does not exceed $100,000, O 59 r 27(6) of the Rules of the High Court 1980 applies. See also *Gulwant Singh* v *Abdul Khalik*[1] — the learned judge made an order for costs on the sessions court scale as the amount due on the date of judgment would not exceed $2,000;

(iii) no certificate under O 59 r 27(6) of the Rules of the High Court 1980 has been obtained by the plaintiff.

The plaintiff appealed against the decision of the learned registrar.

Order 59 r 27 of the Rules of the High Court 1980 is the rule applicable to costs which by order or direction of this court are to be paid to a party to any proceedings by another party thereto. See sub-r (1). Sub-rule (6) of r 27 provides that notwithstanding the foregoing provisions of this rule, if any action is brought in the High Court, which would have been within the jurisdiction of subordinate court, or in which the plaintiff recovers by judgment a sum not exceeding $100,000, the plaintiff shall not be entitled to any more costs than he would have been entitled to if the proceedings had been brought in a subordinate court, unless in any such action a judge certifies that there was sufficient reason for bringing the action in the High Court.

In this action, the plaintiff recovered by judgment a sum not exceeding $100,000. It follows that he the plaintiff was not entitled to any more costs than he would have been entitled to if the proceedings had been brought in a subordinate court and accordingly the decision of the learned senior assistant registrar in this regard was perfectly right.

The plaintiff at the end of the hearing before his Lordship failed to ask in terms of sub-r (6) for a certificate from the judge that there was sufficient reason for bringing the action in the High Court. It might have been inadvertence that led to the failure for it seems clear that at the time this action was commenced there was good reason for bringing the action in this court. I do not know one way or the other whether the plaintiff may now seek such a certificate from the trial judge or for that matter a judge as stated in the sub-rule.

There is another point. The order of the learned registrar spoke to the plaintiff not being entitled to have his costs taxed in this court. That part of the registrar's order seems to be incorrect. See *The Supreme Court Practice* 1985 Vol 2 at p 1496 marginal para 5961 which is authority for the proposition that an imaginary bill must be drawn and taxed, representing the proceedings which would have been taken in the sessions court, and the

payments which the plaintiff would have made in those proceedings. The plaintiff should produce a bill, our registrar should then imagine himself a a taxing officer sitting in the sessions court and, having conditioned his mind so, tax the plaintiff's bill in accordance with the scale of costs applicable to the sessions court.

In view of the foregoing, I am of the view that the plaintiff's appeal against the decision of the learned registrar should be dismissed except in regard to the order last referred to in respect whereof I allow the appeal and direct the registrar to tax the plaintiff's bill of costs, appropriately amended or prepared afresh, on the scale of costs applicable to the sessions court unless in the meantime the plaintiff makes application for a certificate of a judge pursuant to the provisions of O 59 r 27(6).

As it was as much the responsibility of the defendants as the plaintiff's to transfer the action to the sessions court in the first place and to place before the registrar the authority by which he was required to tax the bill albeit on the scale of costs applicable to the sessions court, I make no order as to the costs of this appeal.

Order accordingly.

Solicitors: *John Ang & Jega; Ho, Chong & Menon.*

Reported by *Azra Moiz*

Bank of New Zealand v Wong Kee Tat

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO R8-24-7-89
EUSOFF CHIN J
22 FEBRUARY 1990

Civil Procedure — Reciprocal enforcement of judgment — Jurisdiction of original court — Whether irregularity of original court affects registration — Reciprocal Enforcement of Judgments Act 1958, ss 4 & 5 — Supreme Court of Judicature Act 1969 [Sing], s 16

Revenue Law — Exchange control — Proceedings for debt — Payment subject to permission of Controller of Foreign Exchange — Exchange Control Act 1953, ss 4 & 36

The plaintiff successfully applied to the High Court of Malaya to register a Singapore judgment. The defendant applied to set aside the registration on the grounds, inter alia, that there was no service of the originating process, that the Singapore court had no jurisdiction over the defendant, and that the registration of the judgment would be contrary to public policy as the subject matter of the suit was a loan transaction calculated to defeat the provisions of the Exchange Control Act 1953. The registrar dismissed the defendants' application and he appealed to a judge-in-chambers.

Held, dismissing the defendant's appeal:

(1) The defendant's solicitors had been properly served with the notice of concurrent writ, and although the writ of summons had not been served, the defendant could not now object to the validity of the judgment and should have gone to the original court to rectify any error by setting aside the judgment.

(2) Service is not the sole foundation of jurisdiction of the High Court. The original court had jurisdiction to try the proceedings by virtue of s 16 of the Supreme Court of Judicature Act 1969, and the defendant not having entered an appearance, the judgment would be treated as final.

(3) The loan transaction was not illegal and void simply because the permission of the Controller of Foreign Exchange had not been sought. The Exchange Control Act 1953 does not provide a moratorium for debtors but merely controls the immediate destination of the payments.

[*Editorial Note*: The defendant has appealed to the Supreme Court vide Civil Appeal No 03-22-90.]

Cases referred to

1 *UMBC Bhd* v *Soo Lean Tooi & Ors* [1984] 1 MLJ 47 (refd)
2 *Malayan Banking Bhd* v *International Tin Council* [1989] 3 MLJ 286 (follD)
3 *Pemberton* v *Hughes* [1899] 1 Ch 781 (refd)
4 *Anthinarayana Mudaliar* v *Ajit Singh* [1953] MLJ 229 (refd)
5 *Bumiputra Malaysia Finance Ltd* v *Datuk Syed Kechik & Ors* (Kuala Lumpur Civil Suit C23-1989-86) (unreported) (follD)
6 *Contract and Trading Co (Southern) Ltd* v *Barbey & Ors* [1960] AC 244 (follD)

Legislation referred to

Exchange Control Act 1953 ss 4, 36
Reciprocal Enforcement of Judgments Act 1958 ss 4, 5
Supreme Court of Judicature Act 1969 [Sing] s 16

N Nadkarni for the plaintiff.
MS Murthi for the defendant.

Cur Adv Vult